offered the option of renting a house in the village and receiving an allowance of $25/- a month towards the rent, it was arranged finally that he should occupy the house with which we are now concerned.

On 1st March, 1934, the appellant took over the management of Rinching Estate, and on 6th April he summarily dismissed the respondent and told him to leave the estate forthwith. On 7th April, he forcibly ejected him from the house; and it is in respect of this forcible ejectment that the Magistrate has awarded the respondent damages. The findings of fact of the Magistrate in this case are not attacked; the sole question is whether he was correct in law in so awarding damages.

It is, I think, clear law in England that no action for damages lies against a landlord who forcibly ejects a tenant after the expiry of the term, provided that he uses no more force than is necessary—see *Hemmings* v. *Stoke Poges Golf Club*, (1920) 1 K.B. 720, his right of entry being a defence to civil proceedings. I think that the law is the same here, for while in England the landlord commits an indictable offence under 5 Ric. 2 Stat. 1 c. 7, I very much doubt if he could be charged with any offence in this country.

It is necessary, therefore, to determine first of all whether the appellant had the right to eject him, and consequently we must discover the nature of the tenancy upon which the respondent held. I do not think that he was in occupation of the premises in the course of his employment. The Magistrate has found the facts against this, and I think correctly, that the previous manager gave the respondent the option of living off the estate and renting a house in the village. He was not, therefore, required to live in this house, and he does not come within the class of cases of which *Mayhew* v. *Suttle*, (1854) 4 E. & B. 347, is an example, where the relationship of landlord and tenant is not created at all. I think that this relationship was created but that the respondent was a tenant at will and that his tenancy was determined by his dismissal from the estate. It is of no importance whether he was wrongfully or rightfully dismissed. It has been held in another action that he was wrongfully dismissed; but he has his remedy for the wrongful dismissal in the other action, and if he has been dismissed and notice of the termination of his tenancy given, the tort of his wrongful dismissal does not extend to corrupt the termination of the tenancy.

As I see this case the two causes of action are quite distinct. He held the tenancy of the house while he was clerk-conductor as a tenant at will, and on the morning of the 6th April he was given notice to leave the estate. This was sufficient to determine the tenancy at will, and he remained on as a trespasser; and consequently no right of action lies against the appellant for forcible ejection because the tenancy had already been determined.

I think, therefore, the appeal should be allowed, and the judgment of the Magistrate set aside, and judgment entered for the defendant. The appellant must have costs here and below.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

THOMAS, C.J.

September 24, 1934

HARNAM SINGH.....Appellant.

v.

HO SENG.....Respondent.

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 28 of 1934.]

The Land Code, 1926, sub-section 42 (v)—Yearly tenancy of land—Length of notice to determine such tenancy.

The respondent occupied land belonging to A for a number of years at a yearly rental of $72 and it was agreed that the tenancy could be determined by one year's notice. The respondent built two houses on this land at a cost of $1,400 and expended about $300 in improving the land.

Subsequently the appellant purchased this land and gave the respondent one month's notice of determination of his tenancy, contending that inasmuch as the terms of the agreement between the respondent and A provided for a notice of one year, the term of the tenancy must have been in excess of one year, and consequently such agreement was invalid because it had not been registered under the Land Code, 1926.

Held, that the Land Code, 1926, does not in any way prevent two persons from agreeing that a yearly tenancy may be determined on whatever notice they please and that in view of the provisions of sub-section 42 (v) of the Land Code the respondent was entitled to a full year's notice from the appellant.

B. J. P. Joaquim and *T. T. Bok* for the appellant.

G. A. Hereford for the respondent.

Cur. Ad. Vult.

THOMAS, C. J.—This is an appeal from the judgment of the learned Magistrate of Kuala Kubu Bharu, dismissing the suit of the appellant.

In this suit the appellant claimed that a piece of land together with two houses erected thereon should be delivered up to him, one month's rent of $20, further rent until delivery, and damages. From the evidence it appears that the land in question was sold by one Haji Mohamed to the appellant on or about the 12th of September, 1932. Haji Mohamed has since died. In 1928 Haji Mohamed had allowed the respondent to build two houses on part of his land. This was done at a cost of $1,400. Some $300 were also expended in filling up the land

which was swampy and water logged. The respondent paid the sum of $72 yearly as rent for the piece of land on which the houses had been erected.

This state of affairs continued quite satisfactorily from 1928 to 1933 when the appellant purchased. In 1934 the appellant began to collect the rent monthly, and the respondent paid it monthly for two months. Then the appellant demanded an increased rent. This the respondent was unwilling to pay. On the 28th of February, 1934 the appellant wrote to the respondent a letter which concluded as follows:—

> " Therefore I give you a month's notice that you hereby do surrender possession to me of my land on 1.4.1934."

That is the appellant gave the respondent a notice of one month.

The respondent did not give up possession. He contends that he is entitled to one year's notice under the terms of his agreement with Haji Mohamed viz. that he might stay there as long as he wished provided that he paid the ground rent, and that Haji Mohamed could give one year's notice if he wanted the land back, and that after one year's notice he (respondent) could move his house.

It is provided by the Land Code section 42 (v) that " When at the time the proprietor becomes registered a tenant shall be in possession of the land under an un-registered lease or agreement for a lease or for letting for a term not exceeding one year the title of the tenant under such lease or agreement shall prevail."

Section 118 of the Land Code also provides that:—

> " Any lease or agreement for a lease granted for a term not exceeding one year shall be valid without registration, and every registered dealing with land shall be subject to any prior lease, tenancy or agreement for a lease not exceeding one year to a tenant in possession thereunder: etc."
>
> (cf. *Hunt* v. *Luck*, (1902) 1 Ch. 428)

The plaint claimed not only delivery of the land but also of the houses themselves, which had been built at a cost of $1,400. That value being in excess of the Magistrate's jurisdiction, he had no power to deal with that part of the case.

Now section 32 (iii) of the Civil Procedure Code provides that:—

> " where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit, whether or not an order has been made under sub-section (ii)."

It would therefore seem that the Magistrate had no jurisdiction to deal with the matter at all. This point, however, has not been argued before me. The only issue which has been argued is that relating to the adequacy of the notice.

It has been contended on behalf of the appellant that inasmuch as the terms of the alleged agreement provided for a notice of one year, the term must be in excess of one year, and that therefore in the absence of registration the agreement could not be enforced.

Now agreements not exceeding one year are valid without registration (Land Code, section 118). The Enactment makes no reference to the giving of notice. When any class of agreement is recognised, then all the rights which flow from that agreement must presumably also be recognised. And one of the most important terms in a tenancy is the right to give notice.

In the case of *In re Threlfall; Ex parte Queen's Benefit Building Society*, 16 Ch. D. 274, Collins, L.J., said:—

> " But I know of no law or principle to prevent two persons agreeing that a yearly tenancy may be determined on whatever notice they like. There is freedom of contract in this respect."

And it would seem that the Land Code has not sought in any way to hamper that freedom of contract. In view of section 42 (v) of the Land Code to which I have already referred, it would seem that the respondent was entitled to a full year's notice.

But if it can be assumed that the agreement was invalid in the first instance owing to the terms relating to notice, yet the respondent has entered and been in possession for a number of years. Rent has been regularly paid by him. Can it be argued that in spite of that state of affairs he can be turned out as being merely a tenant at will, and that practically no notice at all need be given? Under such circumstances in my opinion the tenant would become a yearly tenant and would have to be given the notice to which a yearly tenant is entitled.

If further it could be argued that whatever agreement had been made between Haji Mohamed and the respondent, there had been an alteration in the terms, and that a monthly tenancy had been substituted as evidenced by the payment of rent in January and February 1934, even then a notice would have to be given. That notice must be reasonable according to the facts of the case. (See *Simmons* v. *Crossley*, (1922) 2 K.B. 95 Judgment of Swift, J. at page 107). Whereas in the present case large sums of money have been expended in filling up the building site and in the erection of houses thereon, I have no hesitation in saying that a month's notice is not reasonable.

Thus from whatever point of view the case is regarded, the notice given by the appellant was inadequate and therefore invalid. There remains only the question of the month's rent. I am of opinion that the rent was only due at the end of the year, and that therefore the appellant was not entitled to sue for it at an earlier period.

For these reeasons I am satisfied that the suit should have been dismissed. That is the conclusion which the learned Magistrate arrived at. This appeal must therefore be dismissed with costs.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

[THOMAS, C.J.

October 13, 1934.

S. S. P. SUPPIAH PILLAY.....Plaintiff.

v.

P. ARUMUGAM

P. VERAMUTHU.....Defendants.

[SELANGOR CIVIL SUIT No. 101 of 1934]

The Limitation Enactment, 1896, sections 13 and 21—Absence of a Defendant from the Federated Malay States—Exception of time during which Summons can be served—The Civil Procedure Code, 1918, section 66.*

The provisions of section 66 of the Civil Procedure Code, 1918, only require that the affidavit in support of an application for leave to issue a summons for service on a defendant out of the Federated Malay States shall shew in what place or country such defendant is or probably may be found.

Therefore a plaintiff cannot claim the benefit of the exception in section 13 of the Limitation Enactment, 1896, when he knows that the defendant is in India, but fails to make any application under section 66 of the Civil Procedure Code, because he does not know the address of the defendant.

S. M. Yong for the plaintiff.

K. K. Benjamin for the defendants.

Cur. Ad. Vult.

THOMAS, C .J.—This is a suit brought to recover the sum of $514, being the balance due in respect of a promissory note, and unpaid interest up to the 10th of April, 1934 at 24 per cent per annum.

The defendants admit having made the promissory note, but say that the unpaid balance of principal was merged in a bill of sale executed by the first defendant during the month of August, 1932 in favour of the plaintiff, and that the promissory note was thereby discharged. The second defendant claims to avail himself of the discharge pleaded by the first defendant, and further pleads that the promissory note is dated the 5th of July, 1930, that the payments made on account were made without his knowledge or consent, and that therefore the note is barred by the Limitation Enactment as far as he is concerned.

(The judgment goes on to deal with the value which can be placed on the evidence —Editor.)

The second defendant says that he had no knowledge of the payments made by the first defendant, and that they were not made at his request.

Section 21 of the Limitation Enactment provides that nothing in sections 19 and 20 "renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed or of payment made by or to the agent?"

The second defendant went to India. He says that he gave the plaintiff personally his address. This the plaintiff denies. In this matter I accept the plaintiff's statement.

Now under section 13 of the Limitation Enactment in computing any period of limitation prescribed by this Enactment the term during which the defendant shall have been absent out of the States shall be excluded from such computation except any time during which service of a writ of summons can, during the absence of such defendant, be made in any mode prescribed by law.

There is a note at page 61 of the 6th edition of *Rivaz* on Limitation as follows:—

> " Under Act IX of 1871 the operation of the section was limited to cases, where the defendant during his absence could not be served with a summons."

Sections 63—68 of the Civil Procedure Code relate to service out of the Federated Malay States. Section 63 provides that:—

> " no summons for service on a defendant out of the Federated Malay States shall be issued by any Court without the leave of the Supreme Court or a Judge thereof."

Section 66 provides that:—

> " every application for leave to issue a summons for service on a defendant out of the Federated Malay States shall be supported by an affidavit or other evidence .....shewing in what place or country such defendant is or probably may be found.....a copy of the plaint shall be filed with the application."

The plaintiff knew that the second defendant was in India, but was unable on enquiry to discover his address. He, therefore, did nothing. He assumed that any application for service out of the jurisdiction would be refused because the address could not be supplied.